

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL WRIT PETITION NO. 2438 OF 2004**

Joseph Paul ..Petitioner  
V/s.

Mrs. Shelly Dhall w/o. Sanjesh ..Respondents.  
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Shri. Subhash Jha i/by M/s. Law Global for the  
Petitioner.  
Shri A.H.H.Ponda for Respondent No.1.  
Shri Konde Deshmukh, APP for Respondent No.2 -State.  
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**CORAM : A.M.KHANWILKAR, J.**  
**DATED : MARCH 11, 2005**

**PC :-**

. Heard counsel for the parties. Perused the record.

2. This petition is filed by the member of the Complainant (Society) for setting aside the order passed by the Principal Judge of the Sessions Court for Greater Bombay, on anticipatory bail application No. 1024 of 2004, in favour of respondent No.1. The respondent No. 1 has been named as accused in C.R.No. 119/2004 registered with Kurar village Police Station. The respondent No. 1 had applied for anticipatory bail before the Sessions Court even before filing of the subject charge-sheet which, however, was rejected

on 5th of May, 2004. Thereafter, it appears that the respondent No. 1 moved away from Mumbai and started residing at Ambala, as can be seen from the application filed by respondent No.1 before the Sessions Judge at Ambala for grant of transitory anticipatory bail to enable her to approach the appropriate court in Mumbai where the subject offence is registered. That application came to be disposed of on 23rd August, 2004 giving protection to the respondent No.1 to take recourse to the remedy as may be permissible in law before 30th August, 2005. Armed with the said order, respondent No.1 came to Mumbai and filed second application for anticipatory bail before the Sessions Court of Greater Mumbai in August, 2004, which has been disposed of by the impugned order passed on 15th September, 2004. During the pendency of the said application, the Respondent No. 1 was granted interim protection by the Sessions Court. The second application was filed on the assertion of the changed circumstance of registration of FIR and no material forthcoming to indicate the complicity of respondent No.1 in the commission of the offence. That application has been allowed by the order which is impugned in this application.

3. The petitioner before this court, as mentioned earlier, happens to be the member of the society (complainant), has approached this court on the ground that successive anticipatory bail applications as filed by the respondent No.1 before the lower court was not maintainable and for which reason, the order passed thereon in favour of respondent No.1, will have to be set aside. It is next contended that the conduct of the respondent No.1 has been objectionable. It is stated that in the first application filed before the Sessions Court by respondent No.1, the residential address of the respondent No.1 was described as resident of Mumbai; whereas on rejection of the said application on 5th of May, 2004, the respondent No.1 immediately moved away from Mumbai and started residing at Ambala so as to avoid arrest in connection with the alleged offence. It is only after filing of the first information report and the investigation had progressed to some extent, the respondent No.1 thought it appropriate to move the second anticipatory bail application and for that purpose moved formal application before the Ambala court, inter alia, stating that she was resident of Ambala and she was required to reside at the given address on account of some family problems. As the

Ambala court granted limited protection to the Respondent No.1, armed with that order, the respondent No.1 visited Mumbai and filed second anticipatory bail application before the same court i.e. sessions court and asserted that no other application was filed for the same relief earlier either in the same court or before the High Court. According to the Petitioner this statement was palpably false.

4. On the above factual basis the petitioner contends that the respondent No.1 did not approach the court with clean hands, for which reason, question of extending any discretionary relief in favour of the respondent No.1, did not arise; and since, the respondent No.1 resorted to abuse of the process of law, the order as passed by the lower court ought to be set aside, by directing appropriate action to be taken against respondent No.1.

5. To support the above submissions Shri Jha has placed reliance on the decision of the Supreme Court in the case of Pokar Ram vs. State of Rajasthan reported in (1985) 2 Supreme Court Cases 597 (paras 5 and 6); 2003 Cri. Law Journal pg.-1 (Calcutta High Court, Full Bench) in the case of Maya Rani Guin vs.

State of West Bengal; and in case of Municipal Corporation of Delhi vs. Kamla Devi, reported in (1996) 8 Supreme Court Cases 285 (para 7); and (1994) 1 Supreme Court Cases 1 (paras 5 and 6) in the case of S.P. Chengalvaraya Naidu vs. Jagannath & Ors.

6. The counsel for the respondent No.1 on the other hand countered the above submissions by pointing out from the record that respondent No. 1 had disclosed the relevant facts, as were necessary to be disclosed, for the purpose of the second anticipatory bail application. He also submits that there is no restriction on filing of successive anticipatory bail applications in changed circumstances. To buttress this submission, reliance is placed on the decision of our High Court reported in 1988 (1) Bom. C.R. 22 in the case of Devi Das Raghu Nath Naik vs. State as well as the observations of the Apex Court in the case of Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav I (2005) CCR 59 (SC) (para 18,19). Reliance is also placed on the decision of the Apex Court in the case of Gurbaksh Singh Sibbia vs. The State of Punjab, reported AIR 1980 Supreme Court 1632 (para 35). Besides, Counsel for the Respondent No.1 has distinguished the judgement of the full bench of the

Calcutta High Court on the argument that the observations made therein are relating to the fact situation of that case and in any case cannot be pressed into service, as a binding precedent before this court.

7. Having considered the rival submissions, I shall first deal with the argument as to whether filing of successive anticipatory bail applications is permissible. In the present case, it is not in dispute that the first anticipatory bail application was filed before the sessions court, which came to be rejected on 5th of May, 2004. The second anticipatory bail application also came to be filed before the same court i.e. the sessions court. The question is, whether successive anticipatory bail application can be maintained before the same court at all ?

8. In my opinion, this aspect has been considered in the decision of our High Court in the case of *Devi Das Raghu Nath Naik vs. State (Supra)*. This court, after considering the relevant decisions, has taken the view that the parameters which govern the question of maintaining successive bail applications under section 439 of Cr.P.C., will apply with same force to the applications for anticipatory bail under section

438 of Cr.P.C.. The statement of law occurring in the said reported decision of our High Court is, in my opinion, unexceptionable. In so far as the decision of the full bench of the Calcutta High Court, I am in agreement with the argument of Mr. Ponda that the observations made therein are in the context of the fact situation of that case. In that case, the accused had applied for anticipatory bail to the High Court after denial of regular bail by the court below. In that backdrop that court held that successive anticipatory bail application will not be maintainable, as can be seen from the discussion in paras 4 and 28 of the decision. In any case, that decision cannot be a binding precedent over this court. Whereas, I am bound by the decision of our High Court in the case of *Devi Das Naik* (supra). Indeed, even if it is possible to hold that successive anticipatory bail applications can be maintained before the same court, but the rigours as applicable to successive bail application will apply with full force even to the anticipatory bail application. In that, there is a material change in the fact situation calling for a different view being taken or change in law which requires the earlier view being interfered with or where the earlier finding

has become obsolete.

9. The question is, whether there was changed circumstance in the present case. The second application as filed by the respondent No.1 before the lower court clearly discloses the fact that earlier application was filed and the same has been rejected but now FIR has been registered and from the documents already available with the police during the investigation, there was no material to indicate the complicity of the respondent No.1 in the commission of the crime. In that sense, the changed circumstance has been made out in the application. Even the court below has proceeded to consider the case on that basis, as can be discerned from the observations in paragraphs 9 and 10 of the impugned judgment. No fault can be found with the said approach of the lower court. In other words, the respondent No.1 was, in law, entitled to maintain second anticipatory bail application before the same court, having regard to the changed circumstance pointed out in the application and, the same has weighed with the lower court, as noted in the judgment under appeal. In that backdrop, it is not possible to question the correctness of the decision on the first contention

raised on behalf of the petitioner.

10. That takes me to the second contention that because of the conduct of the respondent No.1 she did not deserve grant of any discretionary relief in her favour. The argument appeared to be quite attractive but on closer scrutiny of the pleadings and the record, the foundation on the basis of which the argument was developed, cannot be sustained. In the second application as filed by the respondent No.1 it has been clearly asserted in paragraph 4 that the first anticipatory bail application has been rejected on 5th May, 2004. However, the argument of the petitioner was on the basis of averments made in paragraph 12 which mentions that no other bail application is filed before that court or the High Court, pertaining to this case. Paragraph 12 cannot be read in isolation. The application as has been filed by the respondent No.1 before the lower court will have to be read as a whole; and if so read, there is clear disclosure about the filing of the first application and rejection thereof.

11. Confronted with this situation, the petitioner argues that the respondent No.1 after rejection of the

first anticipatory bail application, instead of making herself available for the purpose of investigation, removed herself from the city of Mumbai and settled down in Ambala, the remote part of Punjab so as to avoid arrest. This submission overlooks the fact that it has been disclosed in her application as was made before the Ambala court that she was required to shift to Ambala because of some family problems. The assertion so made in the said application is obviously on affidavit. Even before the Sessions court at Mumbai, in the second application, which has been filed by respondent No.1, a similar stand has been taken, but with further clarification that she has now succeeded in resolving all her family disputes and has returned back to Mumbai. It is further asserted in the said application that the police at Kurar village Police Station were aware about her whereabouts even when she was away from Mumbai and the police made no effort to contact her or call upon her to appear. This assertion has not been countered either before the lower court or before this court. If it is so, the reasons as stated by the respondent No.1 cannot be lightly brushed aside. So understood, it is not possible to take the view that the respondent No.1 has resorted to abuse of process of the court. On this

finding, the decisions which are pressed into service on behalf of the petitioner in case of S.P. Chengalvaraya Naidu (supra) and Municipal Corporation of Delhi (supra) are of no avail.

12. No other contention has been raised before me. In fact, the maintainability of the present application at the instance of the petitioner herein is, in itself, questionable, but without entering into that debate, I have answered the issues raised before me as the matter was hotly contested by both the sides before this court. Assuming the present petition as filed by the petitioner, is maintainable; but on the findings as noted above, I see no reason to interfere with the conclusion reached by the court below in granting anticipatory bail to the respondent No.1. No interference is, therefore, warranted in the present application.

13. However, while parting with the judgement, I would only mention that the order as passed by the lower court is a blanket order in favour of the respondent No.1 and, in view of the recent pronouncement of the Apex Court in the case of Sunita Devi vs. State of Bihar, reported in IV (2004) CCR 378 (SC), the same cannot be sustained. To that

limited extent the operative order will have to be modified, to the effect that the relief of anticipatory bail shall enure in favour of the respondent No.1 till the filing of the chargesheet. On filing of the chargesheet the respondent No.1 will have to apply for regular bail before the appropriate court.

14. This application is disposed of in the above terms.

15. Ordered accordingly.

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